

# HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

## MINUTES FEBRUARY 16, 2010

Representative Jennifer Weiss, Co-Chairman, called the meeting of the House Select Committee on Homeowners Associations to order at 10:00 a.m. Members present at the meeting were Co-Chairman William McGee, Representatives George Cleveland, Beverly Earle, Chris Heagarty, Julia Howard and Michael Wray. Also present were staff members Karen Cochrane-Brown, Jennifer McGinnis, Bill Patterson, Martha Walston, Joe Moore and committee assistants Susan Doty and Jayne Nelson. Chairman Weiss thanked the Sergeants-at-Arms (See Attachment #1, Sergeants At Arms Register) and welcomed members, staff and visitors. (See Attachment #2, Visitor Registration) Chairman Weiss recognized Representative Frank Iler, Brunswick County, and welcomed him to the meeting. She reported the Public Hearing, held by the committee on February 2<sup>nd</sup>, was well attended. Approximately 40 people spoke at the Public Hearing and committee members continue to hear from homeowners.

Chairman Weiss introduced the first speaker, Mr. Bob Leker, Renewable Program Manager, State Energy Office, North Carolina Department of Commerce. Mr. Leker, who spoke on issues related to solar access law, has been in his current position since 1999 and was with the Energy Division in the mid-1980's. He said there has been an increased interest in solar access that is driven from financial incentives and from sustainability interests. He has seen issues from an installer perspective, solar installer perspective, homeowner perspective and from the perspective of homeowner associations. In speaking, Mr. Leker referred to the solar access law, Senate Bill 670, Session Law 2007-279, AN ACT TO PROVIDE THAT CITY ORDINANCES, COUNTY ORDINANCES AND DEED RESTRICTIONS, COVENANTS, AND OTHER SIMILAR AGREEMENTS CANNOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING THE INSTALLATION OF SOLAR COLLECTORS NOT FACING PUBLIC ACCESS OR COMMON AREAS ON DETACHED SINGLE-FAMILY RESIDENCES (See Attachment #3). The intent in the law is that there is no prohibition for collectors, but there are some sections in this access law that are problematic based on comments received from homeowners and homeowner associations who are uncertain about the interpretation of this access law. Mr. Leker read the restrictions stated in the bill (see attached copy of bill, page 1, Section 1, 160A-201, subsection (a), and (c) which lists restrictions and which, Mr. Leker said, seem to be the problem. Essentially, if one is facing a house from a sidewalk or street, and the solar collector(s) can be seen, the wording in the bill seems to say the exceptions to the prohibitions can be prohibited. Comments he has received from homeowners, builders, and homeowner associations are that they are not sure what the wording means and, specifically, if a portion of the collector can be seen does that mean it's visible. A common thread seems to be no reasonable sighting of collectors, but he has not seen a definition of what constitutes "visible". This is an area that homeowners and homeowner associations are uncertain about and about which the associations have asked for guidance and help.

Rep. McGee asked if there are other restrictions on solar energy panels other than those imposed by HOAs. Mr. Leker responded no. Chair Weiss added that the bill says they can't be restricted, the subsection basically prohibits any visible solar part. Representative McGee replied that the law doesn't prohibit the HOA from enacting restrictions against homeowners. Ms. Walston said there was legislation last session that would invalidate any new restrictive covenants created after December 1, 2009 prohibiting the installation of a solar panel. There can still be restrictions about it being open to common areas, but there can't be any restrictive covenants after December 1, 2009 that would restrict installation subject to those conditions. The question was asked if that restricts any covenant passed prior to any existing houses being retro-fitted, can they still be restricted? Ms. Walston answered that the bill passed last session does not apply to any existing covenants/restrictions in 2007. Chairman Weiss asked if existing HOAs have covenants prohibiting solar panels, how can homeowners in those HOAs make changes in their covenants, or can they change the covenants to allow solar panels? Ms. Cochrane-Brown responded 67% of Homeowners have to agree to an amendment of the declaration. In response to a question by Rep. Cleveland, Ms. Walston said that the bill that passed last session is HB1387, SL 2009-553 (See Attachment #4). Chairman Weiss asked that a copy of each of the laws be made available today so committee members could refer to them. Ms. Walston said the 2009 legislation basically pointed out that the law that passed in 2007 applied to areas that were predominately for residences, so it would include HOAs but it does not apply to multi-story stacked condominiums; it excluded them from the 2007 legislation. In response to a question from Chairman Weiss, Ms. Walston said it means that solar panels can be prohibited. Mr. Leker said most of the issues that he is aware of have been covered; it revolves around the visibility exceptions that allow restrictions to be put into play. He added that the current designs for solar collectors are very sleek and look essentially the same as skylights with there being little difference in appearance. With the interest in this and other states regarding sustainability, people are primarily interested in placing collectors on their roofs and, in rare cases, on the ground. Many examples of legislation around the country and of state incentives for renewable energy can be seen on the Internet at [www.dsireusa.org](http://www.dsireusa.org). In response to a question about placement of panels on the roof, Mr. Leker said there are examples from another states with laws that are more permissive about allowing solar panels: he said he would provide that information to the committee. Chairman Weiss said it would be helpful to talk about sustainability issues. Mr. Leker replied there are federal and state tax credits in place; in NC we are running behind the nation in per capita energy use; the residential building area is a very significant area in terms of energy use and it is easy for buildings to be designed to incorporate solar design from the beginning of construction. A passive solar design can easily save 40-50% of the heating needs of the building and solar water heating can easily count for 60-80% of the hot water needs in incorporating hot water collector systems. In NC we have very good access to the sun energy availability, which has been recognized for decades and which is why the Solar House was designed and built. He said there is a need and opportunity that could be facilitated with policies that give people the incentive to place appropriately designed

solar collector systems on their residences, thereby dramatically reducing the energy footprint of a residence. These systems can also be retro-fitted to south facing roofs. Chairman Weiss asked if an individual who put solar panels on his home potentially qualify for Federal tax credits. Mr. Leker answered yes, 30% for federal tax credit and 35% for state tax credit, plus a reduction in the energy costs and the demand for fossil fuel. He also said there are local companies that are interested in getting into this market; there are emerging solar certification laws, and national boards of certified energy practitioners. In NC we are poised to make a leap forward to provide solar access and to institute solar technology in a range of buildings. Chairman Weiss asked Mr. Leker about recent legislation concerning green power and if utilities are availing themselves of this technology. In response, Mr. Leker said Senate Bill 3, which passed two years ago, required utilities to institute more renewable energy as part of their portfolio of 12 ½% by 2021 as energy sales; the requirement of renewable energy is 7 ½% and 5% from energy conservation. In closing, Mr. Leker said the effectiveness of the programs are shown by both investor owned and co-op utilities coming forward with their own programs; the website previously mentioned has a listing of utility programs now available for individuals as well as companies to incorporate renewables. Chairman Weiss thanked Mr. Leker for the information he provided to the committee.

In response to a question from Rep. McGee, Ms. Cochrane-Brown of the Research Division Staff cited the new Article 3, Section 22 b-20, subsection (b) which basically provides that a HOA cannot impose a deed restriction or covenant that essentially prohibits someone from installing solar energy provision, however, the effective date falls on page 3, Section 4, and says the act becomes effective Oct. 1, 2007 and that Section 3 applies to deed restrictions, covenants or similar agreements on that land recorded on or after that date. Basically, she said, if you create a new association and deed restrictions and you record it after 2007, you cannot include the prohibition. The restrictions that were included before that date are still required and are also subject to restrictions contained in subsection (d); the restrictions of where solar panels can be placed and how visible they can be from certain vantage points. Chairman Weiss said she heard Mr. Leker say that even with the law, after 2007 and with the changes made, the restrictions are so broadly written that it's unclear to what extent a homeowner who lives in a community with a homeowners association can actually have solar panels. She stated it would be helpful for the staff to work with the State Energy Office to find reasonable restrictions and at the same time meaningful language that doesn't completely prohibit this.

Chairman Weiss introduced Mr. Peter E. Powell, Legal Counsel, North Carolina Administrative Office of the Courts. Mr. Powell read a paper written to the committee on issues related to foreclosure on homeowner association liens. (See Attachment #5, Comments to The House Select Committee on Homeowners Associations.) There were no questions from the committee after Mr. Powell's presentation.

The next speaker, Mr. Phil Telfer, Special Deputy Attorney General, Consumer Protection Division, Department of Justice, was introduced by Chairman Weiss. Mr. Telfer spoke to the committee on the number and nature of complaints received from homeowners by the Consumer Protection Division and the type of advice and suggestions that can be given to consumers. The two types of complaints received from throughout the state are 1.) written, for which a file is made, and 2.) a high volume of telephone calls. Regarding written homeowner complaints in the last three full years, he said the number of complaint letters received from homeowners in 2007 were 25 out of a total of 14,516 letters received by the division; in 2008 there were 33 out of a total of 14,768 for the year and in 2009 there were 38 complaint letters out of 18,442 received for the year. He said telephone complaints were a little higher with approximately 100 calls regarding issues with HOAs (in addition to the written complaints) throughout the state per year. Specific records are not kept about telephone calls. Categories fall into 3 areas of complaints: services provided by HOAs, fees charged by HOAs and billing practices of HOAs (assessment, record keeping, mishandling of fees); another large area is foreclosure. Regarding the nature of the complaints received, he said there is not a trend of one bad association receiving a lot of complaints. From the written records, the complaints come from across the state and tend to be for a variety of HOAs. Generally, issues are private legal matters and the Consumer Protection Division tries to advise that the issues are local issues within the community, that the provisions within the HOA bylaws control how changes can be made, and in many ways they are contractual issues to be dealt with within the association. Complaints that are criminal in nature are treated as any others; people are advised to go to local law enforcement. If complaints are about the powers of the association, complainants are referred to their legislators. Mr. Telfer said much of their effort is devoted to education prior to purchasing. A website providing information is available for the public, and consumers are encouraged to talk with current homeowners in the neighborhood prior to purchase. Rep. Wray said, in his experience, most people don't follow those guidelines but just sign the contract to purchase. Chairman Weiss asked, from a legal perspective, where the requirements can be found. Ms. Walston responded that prospective buyers can ask the real estate agent for a copy of the declaration. In response to Rep. McGee's question, Mr. Telfer said that generally the by-laws and declarations would have procedures for an appeal process and that the Consumer Protection Division tries to be sure the appeal process is understood and they advise the homeowner how to proceed. Further, if there are a large number of neighbors with the same complaint, they are referred to the procedures in the declaration and by-laws for replacing members of the homeowner board. Rep. Cleveland said that some homeowners, when they complain to the Consumer Protection Division that their homeowner association broke the law, are told they (the homeowner) should hire a lawyer and take the association to court; he feels that the state should have a way to protect the homeowner. Mr. Telfer referred back to the number of complaints received each year reflecting violations of the law; cases that affect large numbers of consumers are selected from the Attorney General's perspective and, if litigation is brought, it is brought on behalf of the State of North Carolina. Mr. Telfer stated they cannot act as an

individual attorney to each individual and that is why, especially in foreclosure situations, callers are immediately referred to an attorney. Of complaints received, he said there hasn't been one particular management company working across the state affecting broad bands of people. If a complaint is a serious one in the sense of criminal allegations, callers are referred to local authorities. Rep. Heagarty asked if there were any policy recommendations that the state needs to adopt, or is it not thought to be a serious problem. Mr. Telfer replied he would not say the problem is not serious because, if you are the homeowner in that situation, it is a serious problem to you. He said his office has not looked at recommendations or policy changes, but would be glad to work with the committee on issues.

Chairman Weiss recognized Representative Langdon as being in attendance. She then recognized Representative Cleveland who said he felt that if, upon receiving a complaint about a homeowner association, the Attorney General's office would write a letter to the homeowner association stating what the association is doing is wrong a number of problems would be solved. Mr. Telfer said he would take that suggestion back to the Department.

In regard to what must be disclosed, Ms. Walston said the disclosure act states that when residential property is purchased the owner can say that he/she is not disclosing anything; if the owner does disclose, he is required under The Residential Properties Disclosure Act to disclose restrictive covenants at the time of the offer to purchase. To clarify, Chairman Weiss asked if, when a person is selling and the box saying "no disclosures" is checked, it would indicate more the condition of the house rather than any covenants. The law says that the owner can state he is making no representations as to the characteristics and conditions of the real property, or any improvements to the real property except as provided in the contract. She said she is not sure if "characteristics" would include restrictions. Mr. Telfer said the standard disclosure form issued by the Real Estate Commission looks at where restrictive covenants fall. As more and more North Carolina communities have homeowners associations, Chairman Weiss said she feels this is an area that needs more attention. She thanked Mr. Telfer for taking the time to attend the meeting and for answering questions from the committee.

Chairman Weiss asked if there were comments from the members. Representative Earle said she would like more information that would relate to a problem from a constituent regarding his purchase contract which said the property could be used for rental; the board and property management group of his homeowner association recently passed an amendment restricting the number of rentals in the community. The constituent's concerns are about the changes in the lease agreement that originally enabled him to rent his property and now has the possibility of excluding him from renting. Chairman Weiss suggested Representative Earle share the constituent's email with staff for research.

Chairman Weiss stated that at the next meeting, to be held March 4<sup>th</sup>, the committee will be hearing about homeowner associations from the HOA perspective and from the perspective of the homeowner. At the following meeting, the committee will hear about model legislation from a national perspective.

Representative Howard requested a short summary on the current North Carolina statute.

Chairman Weiss announced that the next meetings are on March 4<sup>th</sup> and March 31<sup>st</sup>.

There being no further questions, the meeting was adjourned at 11:05 a.m.

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Chairman Jennifer Weiss

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Susan Doty, Committee Clerk

Attachment #1	Sergeants-At-Arms
Attachment #2	Visitor Registration
Attachment #3	Senate Bill 670, SL 2007-279
Attachment #4	House Bill 1387, SL 2009-553
Attachment #5	Comments to the House Select Committee on Homeowner Associations